

IN THE MATTER between **STAN KUKOVICA**, Applicant, and **ERNESTINE DELORME**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **FORT SMITH, NT**.

BETWEEN:

STAN KUKOVICA

Applicant/Landlord

- and -

ERNESTINE DELORME

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant cleaning costs in the amount of two hundred forty six dollars and thirty eight cents (\$246.38).
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of forty dollars (\$40.00).

3. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of seven hundred seventy five dollars (\$775.00).

DATED at the City of Yellowknife, in the Northwest Territories this 5th day of April, 2007.

Rental Officer

Hal Logsdon

IN THE MATTER between **STAN KUKOVICA**, Applicant, and **ERNESTINE DELORME**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

STAN KUKOVICA

Applicant/Landlord

-and-

ERNESTINE DELORME

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 4, 2007

Place of the Hearing: Fort Smith, NT via teleconference

Appearances at Hearing: Stan Kukovica, applicant
Jason Lepine, representing the respondent

Date of Decision: April 5, 2007

REASONS FOR DECISION

The parties entered into a written tenancy agreement for a three month term commencing on November 1, 2006. The applicant alleged that the respondent abandoned the premises on January 2, 2007. The applicant also alleged that the respondent had failed to repair damages to the premises and had failed to leave the premises in a normal state of cleanliness. The applicant retained the security deposit. The applicant sought an order requiring the respondent to pay rent arrears and repair costs in excess of the retained security deposit and compensation for lost rent.

The parties agreed that a security deposit was provided in the amount of \$775 on November 14, 2006.

The applicant testified that an entry door, frame, door handle and deadlock were damaged. The applicant provided a quotation for the supply of the door and frame only for a price of \$841.91. The applicant stated that he sought relief of only \$775 and was not charging for the labour to install the door. The respondent's representative acknowledged that the door had been damaged and did not dispute the repair costs.

The applicant testified that the carpets were not clean and were stained, requiring steam cleaning at a cost of \$250. The applicant also testified that the premises required cleaning at a cost of \$150. In a filed statement of defence, the respondent disputed the allegations stating that "any

stains present [on the carpet] were minor and attributed to normal wear and tear". The respondent's filed statement of defence also states that "my mother and I did clean the unit very well". The respondent's representative questioned whether the *Residential Tenancies Act* gave a rental officer jurisdiction to award cleaning costs.

Stains on a carpet do not represent normal wear and tear and, in my opinion, justify steam cleaning of the carpets. Fading, discolouration due to exposure to sunlight or ageing, and normal wear of the carpet pile are examples of normal carpet wear and tear. Stains are the result of negligent or wilful conduct. In my opinion, failure to leave the premises reasonably clean is tantamount to damage and relief for cleaning costs is reasonable pursuant to section 42 of the *Residential Tenancies Act*. The applicant's request for relief in the amount of \$250 is reasonable.

The evidence put before me does not support the landlord's allegation that the premises required cleaning, other than the cleaning of the carpets. There is no evidence to indicate what parts of the premises were not clean or how much cleaning the \$150 represents. The applicant's request for relief of \$150 for general cleaning is denied.

The applicant testified that the respondent failed to pay any rent for the month of January, 2007. The applicant claims that since the respondent had possession of the premises until January 2, 2007, he is entitled to two days rent in the amount of \$40. The respondent's representative argued that the respondent actually moved into the premises on November 11, 2006 but paid a

full months rent of \$775 entitling the respondent to a credit which should be applied to the two day's rent in January, 2007.

The written tenancy agreement between the parties states that the tenancy is to commence on November 1, 2006. The applicant testified that the respondent was entitled to possession on that date and was given the keys to the premises. The applicant states that the respondent did not move in because she was waiting for furniture to be delivered and denied that the tenancy agreement commencement date was amended, verbally or otherwise. A tenancy agreement takes effect on the date the tenant is entitled to occupy the premises. The evidence suggests that the commencement date of this tenancy agreement was November 1, 2006. I find the rent applied to the two days of occupancy in January, 2007 of \$40 to be reasonable.

The applicant testified that after the respondent abandoned the premises he advertised the premises for rent and showed it to prospective tenants but was unable to re-rent the premises until February 2, 2007. The applicant sought compensation for one month's rent in the amount of \$775. The respondent's representative alleged that the applicant had disturbed the respondent's quiet enjoyment of the premises, breached his obligation regarding entry to the premises and enforced an unreasonable obligation contained in the tenancy agreement causing the respondent to leave the premises.

Regardless of any breach of the landlord which may have occurred, a matter on which I express no opinion, it does not justify the abandonment of the premises. The respondent could have

easily terminated this agreement on January 31, 2007 by giving notice or by making an application to a rental officer seeking an order terminating the tenancy agreement. Abandonment of rental premises creates a tenant liability, subject to mitigation of damages by the landlord, for lost rent. In this matter, I find that the applicant took reasonable steps to mitigate the damages caused by the respondent's abandonment of the premises and is entitled to compensation for one months lost rent or \$775.

Applying the retained security deposit and accrued interest first to repair costs, I find a balance of cleaning costs to be \$246.38, rent arrears of \$40 and compensation for lost rent owing to the applicant of \$775, calculated as follows:

Security deposit	\$775.00
Interest	3.62
Door repair	(775.00)
Carpet cleaning	<u>(250.00)</u>
Balance of cleaning costs due applicant	\$246.38
Rent arrears (January 1-2)	40.00
Compensation for lost rent (1 month)	<u>775.00</u>
Total Amount due applicant	\$1061.38

An order shall issue requiring the respondent to pay the applicant cleaning costs of \$246.38, rent arrears of \$40 and compensation for lost rent of \$775.

Hal Logsdon
Rental Officer